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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 ANTHONY E. WHITFIELD,

7 Petitioner,

8 v.

9 SCOTT FRAKES,

10 Respondent.

No. C09-5361 FDB/KLS

ORDER GRANTING MOTION FOR  
MORE DEFINITE STATEMENT

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12 This habeas corpus petition has been referred to United States Magistrate Judge Karen L.  
13 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner Anthony  
14 E. Whitfield seeks federal habeas corpus relief pursuant to 28 U.S.C. § 2254. Dkt. 5. Before the  
15 court is Respondent's motion for more definite statement. Dkt. 12. Having considered the  
16 motion, the petition, and balance of the record, the court finds and **ORDERS** as follows:

17 **DISCUSSION**

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19 Respondent states that after carefully reviewing the petition and attachments and because  
20 of discrepancies in the pleadings, he is confused as to the specific grounds for relief actually  
21 pursued by Mr. Whitfield in this habeas corpus proceeding. Dkt. 12. Respondent therefore,  
22 requests that the Court direct Mr. Whitfield to provide a concise statement of the actual grounds  
23 for relief he intends to raise in the current petition so that the Respondent may properly respond.

24 Under Rule 12(e), "[a] party may move for a more definite statement of a pleading to  
25 which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot  
26

1 reasonably prepare a response.” Fed.R.Civ.P. 12(e). The motion requesting a more definite  
2 statement must identify defects and specify the details desired. *Id.*

3 Mr. Whitfield’s petition consists of a form petition under 28 U.S.C. § 2254, and a number  
4 of attachments. *See* Dkt. 5; 5-1. On page 6 of the form petition, in the section provided for the  
5 petitioner to specifically identify the grounds for relief, Mr. Whitfield wrote, “\*SEE  
6 ATTACHMENT Though I appealed my direct appeal and P.R.P to State Supreme Court . . . I am  
7 only raising my P.R.P. issues with this court (U.S. District Court of Western Washington).” Dkt.  
8 5, p. 6. Respondent notes, however, that on page 12 of the form petition, Whitfield indicates the  
9 habeas corpus petition also raises a ground for relief that has not been presented in state court,  
10 identifying that ground as “a rebuttal ground pertaining to the State’s assertion that the ‘except  
11 HIV infection’ of RCW 70.24.140 is exclusionary (State Resp. Pg. 5-6) . . . SEE  
12 ATTACHMENT.” *See* Petition, Doc. # 1-2, at 12.

13  
14 The second attachment to the form petition is a two page document, titled “Supplemental  
15 Authorities For Habeas Petition.” Dkt. 5, Exh. 1, pp. 16-17. This document states it is “a  
16 SUPPLEMENTAL AUTHORITIES FOR HABEAS PETITION memorandum to clarify the  
17 principle ground that the petitioner is raising in his Writ of Habeas Corpus, and the authorities in  
18 support.” *Id.*, p. 16. Petitioner then states:  
19

20 I. PETITIONER’S PRINCIPLE GROUND

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22 WHITFIELD’S STATE AND U.S. CONSTITUTIONAL RIGHTS TO EQUAL  
23 PROTECTION OF THE LAWS WERE VIOLATED BY THE COEXISTING,  
24 CONCURRENT, AND FULLY OPERATIONAL LEGISLATIVE  
25 ENACTMENTS OF RCW 70.24.140, 080 AND RCW 9A.36.011(1)(b), WHICH  
26 EFFECTUALLY VESTED THE PROSECUTING ATTORNEY WITH  
IMPROPER DISCRETION TO CHARGE WHITFIELD WITH EITHER RCW  
70.24.140, 080 (Gross misdemeanor punishment) OR RCW 9A.36.011(1)(b)  
(Felony punishment).

1 Dkt. 5-2, p. 16.

2 Because of the prominent identification of this single ground, Respondent believes that it  
3 suggests it is the only ground for relief Mr. Whitfield intends to pursue in federal court. Dkt. 12,  
4 p. 2. However, Respondent argues that Mr. Whitfield's use of the word "principle" creates  
5 confusion, suggesting that this can be either the only ground for relief, or the primary ground  
6 among many grounds for relief. *Id.*

7  
8 Respondent complains that a review of the petition and attachments do not clarify this  
9 point as the very next page of the document provides argument concerning this "principle"  
10 ground, but then appears to indicate that Mr. Whitfield is also raising additional grounds  
11 included "in his MEMORANDUM ATTACHMENT (Section III.). Dkt. 5-2, p. 17. The next  
12 attachment to the petition, titled "MEMORANDUM ATTACHMENT," appears to raise at least  
13 five additional grounds as it sets forth five "QUESTIONS PRESENTED," and provides  
14 argument concerning these five questions. *Id.*, pp. 19-20. However, at the end of this  
15 attachment, Mr. Whitfield writes:

16  
17 \*This memorandum reverts to the legal grounds used in Whitfield's P.R.P. Please  
18 refer to the equal protection violations therein in addition to the grounds raised  
herein: NATURE OF CASE (Section III.)

19 Dkt. 5-2, p. 24.

20 After review of Mr. Whitfield's petition and attachments, the court agrees with  
21 Respondent that is unclear whether Mr. Whitfield wishes to pursue only those claims actually  
22 identified in the personal restraint petition filed in state court, just the "principle" claim identified  
23 in the "Supplemental Authorities" attached to the form petition, the issues raised in the  
24 "Memorandum Attachment," or all of the various issues identified throughout the form petition  
25 and attachments.  
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1 Accordingly, it is **ORDERED**:

2 (1) Respondent's motion for a more definite statement (Dkt. 12) is **GRANTED**.  
3 Petitioner shall file and serve a concise statement of the grounds raised in his petition on or  
4 before **November 13, 2009**. Respondent shall file and serve his answer within 45 days after  
5 service of the statement of the grounds for relief.  
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7 (2) The Court Clerk is directed to send copies of this Order to Petitioner and counsel  
8 for Respondent.

9 **DATED** this 26th day of October, 2009.

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12 Karen L. Strombom  
13 United States Magistrate Judge  
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